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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,185	07/17/2006	Bernhard Braunecker	16455.4	4205
57137 7590 01/07/2010 WORKMAN NYDEGGER/Leica 1000 Eagle Gate Tower 60 East South Temple Salt Lake City, UT 84111				
			EXAMINER ALLI, PYABO	
			ART UNIT 2877	PAPER NUMBER
			NOTIFICATION DATE 01/07/2010	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Docketing@WNLAW.COM  
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### Office Action Summary

**Application No.**

10/595,185

**Applicant(s)**

BRAUNECKER ET AL.

**Examiner**

IYABO S. ALLI

**Art Unit**

2877

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 30-76 is/are pending in the application.
- 4a) Of the above claim(s) 1-29 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 30-51 is/are allowed.
- 6) ☒ Claim(s) 52 is/are rejected.
- 7) ☒ Claim(s) 53-76 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB-06)  
Paper No(s)/Mail Date 07/21/2008
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments, see remarks on pages 13-20, filed August 13, 2009, with respect to claims 30-51 have been fully considered and are persuasive. The 103(a) rejections of claims 30-51 have been withdrawn.
2. Applicant's arguments with respect to claims 52-76 have been considered but are moot in view of the new ground(s) of rejection.
3. As stated below **Shimoyama** does in fact disclose a laser radiation source **74**.

### ***Claim Objections***

4. Claim **52** is objected to because of the following informalities: the word 'be' before the word automatically on the last line of the claim should be removed. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims **52-58**, **61-63** and **71-74** rejected under 35 U.S.C. 103(a) as being unpatentable over **Shimoyama et al.** (7,081,917).

**As to claim 52**, **Shimoyama** discloses a laser radiation source (light emitting element **74**) for producing laser radiation (Column 7, lines 4-5 & 24-25 and Fig. 2); a

measuring component (wide-angle CCD camera element **88**) configured to automatically detect reference points which have been made detectable, the measuring component further configured to derive location information of the reference points (Column 9, lines 39-50 and Fig. 2), the measuring component (wide-angle CCD camera element **88**) comprising a receiver configured to receive the laser radiation, the receiver being configured to measure distance (Column 10, lines 10-20 and Figs. 2, 5 and 8); a control component configured to change the emission direction of the laser radiation (from light source **80**), the control component being configured so that at least one spatial segment can be automatically scanned by laser radiation (from light source **80**) (Fig. 2); and a position component configured to derive the actual position of the device from the location information of the reference points (Column 7, lines 40-52).

Although **Shimoyama fails to disclose** the device being a measuring appliance, it would have been obvious to one skilled in the art at the time of the invention to substitute the surveying apparatus **110** (refer to Column 6, lines 8-17 and Fig. 5), for the measuring appliance above, in order to achieve the predictable results of being able to maneuver and position the measuring device as desired depending on the desired distance to the target points that the user determines is necessary for that particular measurement.

***Allowable Subject Matter***

7. Claims **30-51** are allowed.

8. Claims **53-76** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
9. The following is an examiner's statement of reasons for allowance:

**As to claim 30**, the prior art of record, taken alone or in combination, fails to disclose or render obvious the distance between the measuring appliance and the second reference point and/or the angle ( $\gamma$ ) between the first and second reference points; and the angle of inclination ( $\alpha, \beta$ ) to the first or to the second reference point; or at least one distance to a third reference point as clearly shown in combination with the rest of the limitations of the claim.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Reference **7,081,917** discloses a surveying apparatus provided with a pick-up device such as a CCD camera, and an image processing unit, and in particular to a surveying apparatus suited to measurement of respective positions of a large-scaled structure such as a bridge, a ship, or a tunnel.

However, it fails to disclose the limitations cited above in claim 30 in reference to the measurements of the reference points and angles above.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. **US 6,734,952 B2** teaches an optical-electronic marker search device consisting of a fan-shaped transmitting channel that irradiates the marker to be located, a fan-shaped receiving channel that receives light reflected from the marker object, a motorized measuring device, at least one electronic evaluating unit to determine the rough location of the marker point, signal strength of the reflected signal, the width of the marker object in the scanning direction, and the distance to the marker object.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to IYABO S. ALLI whose telephone number is (571) 270-1331. The examiner can normally be reached on M-Fr: 7:30am- 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Toatley can be reached on 571-272-2059. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory J. Toatley, Jr./  
Supervisory Patent Examiner,  
Art Unit 2877  
6 January 2010

IYABO S. ALLI  
Examiner  
Art Unit 2877

December 22, 2009 /I. S. A./  
Examiner, Art Unit 2877